

OFFICIAL GAZETTE



GOVERNMENT OF GOA

Note: There is one Supplement and one Extraordinary issue to the Official Gazette Sr. II, No. 33 dated 12-11-98 as follows:

- 1) Supplement dated 12-11-98 from pages 471 to 486 regarding Orders from Department of Labour.
- 2) Extraordinary dated 13-11-98 from pages 487 to 488 regarding Notification from Department of Revenue.

GOVERNMENT OF GOA

Department of Finance
Revenue & Expenditure Division
Finance Commission Cell

Order

No. 2/7/92/-FCC

Government is pleased to appoint Shri Rajib Kumar Sen, Senior Research Officer, Planning Commission, New Delhi to the ex-Cadre post of Officer-on-Special Duty (Finance Commission Cell), Government of Goa on deputation for a period of two years in the first instance from the date of taking over the charge in the pay scale of Rs. 10000-325-15200 with other usual allowances like D.A., H.R.A., C.C.A., etc. as admissible to the State Government employees. The terms and conditions of deputation will be as per standard rules of deputation.

The appointment is made against the ex-cadre post of O.S.D. (F.C.) which was created vide Order No. 2/7/92-Fin(Bud) dated 7-3-95 and continued vide Order No. 2/7/92-FCC dated 22-7-98.

The expenditure will be debitable to the Head of Account "2052-Secretariat - General Services, 090-Secretariat, 03-Finance Department".

By order and in the name of the Governor of Goa.

Vivek Rae, Commissioner and Secretary (Finance).

Panaji, 29th September, 1998.

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Governor's Secretariat

Raj Bhavan

Order

No. GEST/2/42/98/2048

Read: (1) Order No. GEST/1/65/3074/96 dated 19th December, 1996.

(2) Circular No. GEST/1/97/98 dated 13th January, 1997.

(3) Letter No. NA/0390/92/151/2085/DO(P)/D(N-II)/98 dated 16th October, 1984 from Director (CG), Govt. of India, Ministry of Defence.

In continuation of this office order/circular quoted at (1) and (2) above and in accordance with the letter quoted at (3) above, the tenure of Lt. Parijat Sinha, ADC to Governor is hereby extended from 8-1-1999 to 7-6-1999 or till a suitable substitute is selected by His Excellency the Governor of Goa, whichever is earlier.

Dharmendra Sharma, Secretary to Governor.

Dona Paula, 30th October, 1998.

Department of General Administration

Notification

No. 2/1/98-GAC-H

The Government of Goa is pleased to direct that the days specified in the Annexure I shall be observed as Holidays in all Government Offices in the State of Goa during the year 1999 (Saka 1920-1921).

2. In addition to the Holidays specified in Annexure I, an employee is permitted to avail himself of any 2 Holidays out of the Restricted Holidays specified in Annexure-II.

3. The Government is also pleased to declare commercial and Industrial Holidays for the Commercial and Industrial Workers in Goa as specified in Annexure-III

4. Further, in exercise of the powers conferred under explanation to Section 25 of the Negotiable Instrument Act, 1881 (Act 26 of 1881) read with Government of India, Ministry of Home Affairs Notification No. U.11030/2/2/73-UTL dated 28-6-1973, the Government of Goa is also pleased to declare the days specified in the Annexure IV to be Public Holidays (Bank Holidays) in the State of Goa.

By order and in the name of the Governor of Goa.

S. V. Madkaikar, Under Secretary (GA).

Panaji, 27th October, 1998.

ANNEXURE - I

List of Public Holidays for the year, 1999

Sr. No.	Holidays	Date	Saka	Days of the week
1.	Idul Fitr	January, 20th	Pausa 30, 1920	Wednesday
2.	Republic Day	January, 26th	Magh 6 1920	Tuesday
3.	Mahashivratri	February, 14th	Magh 25, 1920	Sunday
4.	Holi	March, 1st	Phalguna 16, 1920	Monday
5.	Gudi Padva	March, 18th	Phalguna 27, 1920	Thursday
6.	Idul Zuha (Bakri-Id)	March, 29th	Chaitra 8, 1921	Monday
7.	Good Friday	April, 2nd	Chaitra 12, 1921	Friday
8.	May Day	May, 1st	Vaishakha 11, 1921	Saturday
9.	Goa Statehood Day	May, 30th	Jyaistha 9, 1921	Sunday
10.	Milad-Un-Nabi or Id-e-Milad (Birthday of Prophet Mohammad)	June, 27th	Ashada 6, 1921	Sunday
11.	Independence Day	August, 15th	Sravana 24, 1921	Sunday
12.	Ganesh Chaturthi	September 13th	Bhadra 22, 1921	Monday
13.	Ganesh Chaturthi (2nd day)	September, 14th	Bhadra 23, 1921	Tuesday
14.	Mahatma Gandhi's Birthday	October, 2nd	Asvina 10, 1921	Saturday
15.	Dussehra	October, 19th	Asvina 27, 1921	Tuesday
16.	Diwali	November, 7th	Kartika 16, 1921	Sunday
17.	Feast of St. Francis Xavier	December, 3rd	Agraha 12, 1921	Friday
18.	Goa Liberation Day	December, 19th	Agraha 28, 1921	Sunday
19.	Christmas Day	December, 25th	Pausa 4, 1921	Saturday

ANNEXURE - II

List of Restricted Holidays for the year, 1999

Sr. No.	Holidays	Date	Saka	Days of the week
1.	New Year's Day	January, 1st	Pausa 11, 1920	Friday
2.	Guru Ravi Das Birthday	January, 5th	Pausa 15, 1920	Tuesday
3.	Makarāsankranti	January, 14th	Pausa 24, 1920	Thursday
4.	Ram Navmi	March, 25th	Chaitra 4, 1921	Thursday
5.	Mahavir Jayanti	March, 29th	Chaitra 8, 1921	Monday
6.	Maundy Thursday	April, 1st	Chaitra 11, 1921	Thursday
7.	Shivaji Jayanti	April 14th	Chaitra 24, 1921	Wednesday
8.	Muharam	April, 27th	Vaishaka 7, 1921	Tuesday
9.	Budha Purnima	April, 30th	Vaishaka 10, 1921	Friday
10.	Feast of Sacred Heart of Jesus	June, 11th	Jyaistha 21, 1921	Friday
11.	Onam	August, 25th	Bhadra 3, 1921	Wednesday
12.	Raksha Bandan	August, 26th	Bhadra 4, 1921	Thursday
13.	Janmasthami	September, 3rd	Bhadra 12, 1921	Friday
14.	Hartalika	September, 12th	Bhadra 21, 1921	Sunday
15.	Dussehra (Maha Astami)	October, 18th	Asvina 26, 1921	Monday
16.	All Souls Day	November, 2nd	Kartika 11, 1921	Tuesday
17.	Govardhan Puja	November, 8th	Kartika 17, 1921	Monday
18.	Bhau Bij	November, 10th	Kartika 19, 1921	Wednesday
19.	Guru Nanak's Birthday	November, 23rd	Agraha 2, 1921	Tuesday
20.	Guru Tej Bahadur Martydom day	November, 24th	Agraha 3, 1921	Wednesday
21.	Feast of Immaculate Conception	December, 8th	Agraha 17, 1921	Wednesday
22.	Christmas Eve	December, 24th	Pausa 3, 1921	Friday
23.	New Year's Eve	December, 31st	Pausa 10, 1921	Friday

ANNEXURE - III

List of Commercial & Industrial Holidays for the year, 1999

The following days are suggested as paid holidays for Commercial and Industrial workers in Goa for the year, 1999.

Sr. No.	Holidays	Date	Saka	Days of the week
1.	Republic Day	January, 26th	Magh 6, 1920	Tuesday
2.	May Day	May, 1st	Vaishakha 11, 1921	Saturday
3.	Independence Day	August, 15th	Sravana 24, 1921	Sunday
4.	Ganesh Chaturthi	September, 13th	Bhadra 22, 1921	Monday
5.	Mahatma Gandhi's Birthday	October, 2nd	Asvina 10, 1921	Saturday
6.	Diwali	November, 7th	Kartika 16, 1921	Sunday
7.	Goa Liberation Day	December, 19th	Agraha 28, 1921	Sunday
8.	Christmas Day	December, 25th	Pausa 4, 1921	Saturday

According to decision communicated by Government of India, Ministry of Finance in Memorandum No. F.8(7)EST(SPI) dated 7th November, 1963 Casual Employees including daily rated staff will be entitled to be paid holidays if they are in service on the proceeding and succeeding working day.

ANNEXURE - IV

List of Bank Holidays for the year, 1999

Sr. No.	Holidays	Date	Saka	Days of the week
1.	Idul Fitr	January, 20th	Pausa 30, 1920	Wednesday
2.	Republic Day	January, 26th	Magh 6, 1920	Tuesday
3.	Mahashivratri	February, 14th	Magh 25, 1920	Sunday
4.	Holi	March, 1st	Phalguna 10, 1920	Monday
5.	Gudi Padva	March, 18th	Phalguna 27, 1920	Thursday
6.	Idul Zuha (Bakri-Id)	March, 29th	Chaitra 8, 1921	Monday
7.	Yearly Closing of Accounts	April, 1st	Chaitra 11, 1921	Thursday
8.	Good Friday	April, 2nd	Chaitra 12, 1921	Friday
9.	May Day	May, 1st	Vaishakha 11, 1921	Saturday
10.	Goa Statehood Day	May, 30th	Jyaistha 9, 1921	Sunday
11.	Milad-un-Nabi or Id-e-Milad (Birthday of Prophet Mohammed)	June, 27th	Ashada 6, 1921	Sunday
12.	Independence day	August, 15th	Sravana 24, 1921	Sunday
13.	Ganesh Chaturthi	September, 13th	Bhadra 22, 1921	Monday
14.	Ganesh Chaturthi (2nd day)	September, 14th	Bhadra 23, 1921	Tuesday
15.	Half Yearly Closing	September, 30th	Asvina 8, 1921	Thursday
16.	Mahatma Gandhi's Birthday	October, 2nd	Asvina 10, 1921	Saturday
17.	Dussehra	October, 19th	Asvina 27, 1921	Tuesday
18.	Diwali	November, 7th	Kartika 16, 1921	Sunday
19.	Feast of St. Francis Xavier	December, 3rd	Agrahayana 12, 1921	Friday
20.	Goa Liberation Day	December, 19th	Agrahayana 28, 1921	Sunday
21.	Christmas Day	December, 25th	Pausa 4, 1921	Saturday

Department of Labour

Order

No. 23/18/88-LAB/2607

On recommendation of the Goa Public Service Commission vide their letter No. COM/II/11/28(2)97 dated 22-9-98, Government is pleased to promote Shri S. V. Chari, Surveyor (TBPS) to the post of Principal, Group 'B' Gazetted, on regular basis in the pay scale of Rs.

6500-200-10500 with effect from the date he takes charge of the post and is posted at I.T.I., Canacona.

Shri Chari shall be on probation for a period of two years.

By order and in the name of the Governor of Goa.

R. S. Mardolker, Commissioner, State Director of Craftsmen Training and Ex-Officio Joint Secretary (Labour).

Panaji, 15th October, 1998.

Order

No. CL/Pub-Award/98/9629

The following Award dated 10-6-1998 in Reference No. IT/91/89 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Ex-Officio Joint Secretary (Labour).

Panaji, 9th July, 1998.

**IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI**

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/ 91/89

Shri Antonio Pereira,
H. No. 207, Fatorda,
Margao-Goa.

— Workman/Party I

V/s

M/s Subray & Company Pvt. Ltd.,
Station Road,
Margao - Goa.

— Employer/Party II

Workman/Party I represented by Adv. Shri P. J. Kamat.

Employer/Party II represented by Adv. Shri B. G. Kamat.

Dated: 10-6-1998

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, The Government of Goa by order No. 28/63/89; LAB dated December 15, 1989 referred the following dispute for adjudication to this Tribunal.

“ Whether the action of the management of M/s Subray and Company Private Limited, Margao, in terminating the services of Shri Antonio Pereira, Mechanic, w.e.f. 10-2-1989 is legal and justified ?

If not, to what relief the workman is entitled ? ”

2. On receipt of the reference, a case was registered under No. IT/91/89 and registered A/D notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. The workman/party I (For short “workman”) filed his statement of claim which is at Exb. 2. The facts of the case in brief as pleaded by the workman are that he was employed with the employer/party II (For short “employer”) with effect from 1st January, 1959 as a Mechanic. That right from the date of his employment, Shri Ramdas Mallya, who was also the Managing Director of Emco Goa Pvt. Ltd., was managing, controlling and supervising the affairs of the employer/company along with his family members. That however, since the year 1975, Shri Ghode, his family member started managing the affairs of the said company and Shri Mallya and his family members dis-associated themselves from the said company. That, since the time the management of the employer company was taken over by Shri Ghode and his family, the financial position of the said company deteriorated and it became critical in the year 1984 as a result of which, the employer could not pay even the monthly salary of the employees regularly and the salaries remained in arrears even for six months. That however, the employer continued the

earlier practise of paying small sums as advance against salaries. That in the year 1987-88, the financial position of the employer worsened and the employer paid the amounts as advance to the employees lastly in the month of August 1989 and the workman received such last advance of Rs. 200/- on 19-8-88. That on 18-2-89, when he went to report for duties and wanted to open the shop premises as usual, he found that there were no keys of the shop premises on the keyboard and when he made enquiries with Shri Prakash Ghode who was then looking after the affairs of the employer-company, he was told by him that his services were no more required and he could go. That he thereafter approached the office of the Dy. Labour Commissioner and the Dy. Labour Commissioner after inspecting the employer's establishment instituted prosecution against the employer company. That since 10th February, 1989 he regularly contacted the Head Office of the employer and requested that his services be dispensed with legally by paying all his legal dues if his services are not required and he also demanded the payment of wages due to him from the year 1984 after adjusting the advances paid to him from time to time. That the employer did not do so and therefore, the workman sent registered A/D notice to the employer on 22-9-89 but no reply was received. That thereafter, he raised a dispute with the employer and the Dy. Labour Commissioner, Margao and on ending of the conciliation proceedings in failure, the Government made the present reference on receipt of the failure report. The workman contended that the termination of his services by the employer with effect from 10-2-89 is illegal and unjustified and he therefore claimed that he is entitled to be reinstated in service with full back wages and other consequential reliefs.

3. The employer filed the written statement which is at Exb. 3. The employer stated that the workman was employed exclusively to render after sales service to customers in respect of the employer's agency goods such as compressors manufactured by Elgi Equipment Ltd. The employer stated that its financial position became precarious on account of termination of various agencies by their principals and the employer company became defunct by the end of the accounting year 1979-80 and hence the employer was not in a position to allot work to the workman from the year 1979 onwards. The employer stated that the workman continued to draw full salary by claiming to be on duty but without doing any work. The employer stated that from 1979 till 10-2-89, the workman after reporting for duties used to leave the place of work for the entire day for attending work of private parties for which he was paid by them. The employer stated that from 10-2-89, the work place where the workman used to work was closed and on such closure, the services of the workman were terminated and no dues were found to be payable to the workman. The employer denied that the refusal of employment to the workman which was on account of closure, is illegal or bad in law. The employer stated that the workman has attained the age of superannuation on 21-1-91 after completing 58 years of age. The employer denied that the workman is entitled to reinstatement or any other relief.

4. On the pleadings of the parties, following issues were framed at Exb. 4.

1. Does Party I-workman prove that the order of termination passed by the party II is not legal and justified ?
2. Does party II prove that this company became a defunct company from 1979 and hence the company was closed and the services of the party I were terminated from 10-2-89 ?
3. Whether the party I is entitled to any relief ?
4. What award or order ?
5. My findings on the issues are as under:-

Issue No. 1:-	In the affirmative
Issue No. 2:-	In the negative
Issue No. 3:-	As per para 14 below
Issue No. 4:-	As per order below

REASONS

6. *Issue Nos. 1 and 2:-* These issues are taken up together as they are inter related. Adv. Shri P. J. Kamat, the learned counsel for the workman submitted that it is an admitted fact that the workman worked with the employer till 10-2-89 though the employer contended that its financial position became precarious from the year 1979 due to termination of their various agencies by the principals. He submitted that the termination of the services of the workman by the employer amounts to retrenchment and there is violation of the provisions of Sec. 25-F of the I.D. Act, 1947 as the employer did not give one month's notice to the workman prior to termination of his service, nor paid notice pay in lieu of notice or retrenchment compensation at the time when the services of the workman were terminated. He submitted that therefore, the termination is illegal and bad in law. Adv. Shri P. J. Kamat submitted that the contention of the employer that the services of the workman were terminated on account of the closure of the establishment is false and incorrect. He referred to the Form No. 3 A, Exb. 12 colly submitted by the employer to the office of the Provident Fund Commissioner and submitted that as per the said form, the employer had informed the said office that the workman left the service on 31-5-87 on account of the closure of the business and therefore, the contention of the employer that the services of the workman were terminated on 10-2-89 is false and contradictory. He submitted that there is no evidence from the employer that the business was closed from 10-2-89. He submitted that there is no letter from the employer to the workman that his services are no more required because of the closure of the business nor the employer replied to the demand letter of the workman nor filed any reply in the conciliation proceedings. He submitted that if the business of the employer was closed, the employer would have stated so by sending reply to the demand letter of the workman or would have participated in the conciliation proceedings and brought this fact to the notice of the conciliation officer. He submitted that the termination of services of the workman is illegal being in violation of the provisions of Sec. 25 F of the I.D. Act, 1947 and hence he is liable to be reinstated in service with full back wages.

7. Adv. Shri B. G. Kamat, the learned counsel for the employer on the other hand submitted that the provisions of the Shops and Establishment Act are not applicable to the workman as he was drawing more than Rs. 500/- p.m. as salary. He submitted that Shri Prakash Ghode, the witness examined by the employer has stated in his deposition that after 1989, the registration in respect of the shop and offices of the employer was not renewed, and for non-renewal, the Managing Director of the employer was prosecuted under the Shops and Establishment Act before the Chief Judicial Magistrate, Margao being the Labour case No. 710/L/89 and 711/L/89. He submitted that the employer has produced the certified copy of the judgment dated 30-6-90 passed by the Chief Judicial Magistrate acquitting the Managing Director. He submitted that the above fact do show that the business of the employer was closed from the year 1989. He referred to the letter dated 20-9-89 Exb. 14 of the workman and submitted that in the said letter, the workman himself has agreed that the business of the employer was closed. He submitted that the workman in his cross examination has admitted that there was no work for him from 1978-79 till 1989 and he has further admitted in his statement of claim that the financial condition of the employer was not good from 1979 onwards. He submitted that the above evidence supports the contention of the employer that the business was closed in the year 1989 because of the financial difficulties. He referred the deposition of Shri Ganpat Kerkar, the witness examined by the workman and submitted that his evidence also supports the contention of the employer that its business is closed. He further submitted that the workman has admitted in his cross examination that his date of birth is 21-1-1933 and therefore, he would have retired from service on 21-1-91 on completing the age of 58 years. He submitted that therefore, in any event, the relief of reinstatement cannot be granted to the workman.

8. It is an admitted fact that the workman was employed with the employer as a mechanic since the year 1959. It is also an admitted fact that the services of the workman were terminated from 10-2-1989. The contention of the workman is that his services were terminated illegally and in contravention of the provisions of Sec. 25 F of the I. D. Act, 1947 whereas it is the contention of the employer that the services of the

workman were terminated on account of the closing of the establishment. It is therefore to be seen whether the establishment of the employer was infact closed when the services of the workman were terminated on 10-2-1989 or whether the services were terminated otherwise.

9. The workman as well as the employer have led evidence in support of their respective case. The workman has examined himself and one witness Shri Ganpat Kerkar whereas the employer has examined Shri Prakash Ghode, the Director of the employer company. The contention of the employer is that its financial condition started deteriorating since the year 1979 on account of termination of various agencies by their principals and as such, no work could be provided to the workman from the year 1979 till the date of termination of his service. About the deteriorating of the financial condition of the employer and no work for the workman has been admitted by the workman in his statement of claim and in his evidence. However, this by itself would not mean that the employer closed its business/establishment from 10-2-89. In fact, the contention of the employer that its establishment was closed from 10-2-89 is self contradictory as can be seen from the Form 3A dated 25-7-87 produced by the workman at Exb. 12 colly. This is the form which has been submitted by the employer to the office of the provident Fund Commissioner. The information contained in the said form is provided by the employer itself. In the said form, the employer has stated that the workman has left the services on 31-5-87, and the reasons for his leaving the services is given as on account of the closure of the business. In the present case, the employer never took the stand that its establishment was closed from the year 1987. Shri Prakash Ghode, the witness for the employer in his cross examination has stated that the statement made by the employer in the written statement that its establishment was closed and the services of the workman were terminated from 10-2-89 is correct, which means that statement made in form 3A Exb. 12 colly that the business was closed and the workman left the services on 31-5-87 is incorrect. This also means that though the financial condition of the employer was not good, the establishment was not closed and the workman continued to be in employment till 10-2-89. The fact that the workman continued to work with the employer till 10-2-89 is admitted by the employer's witness Shri Prakash Ghode in his cross examination. Therefore, now the question is whether the employer has led any evidence to prove that the services of the workman were terminated from 10-2-89 on account of the closure of the establishment. The employer has produced the balance sheets for the years ending 31st March 1986 and 31st March, 1987 Exb. 15 (colly). The witness Shri Prakash Ghode has stated in his deposition that no balance sheet was prepared the year 1987. The balance sheets by themselves do not prove that the establishment is closed. The balance sheets at the most show the financial position of the establishment. Nearly because no balance sheet was prepared after the year 1987 would not mean that the employer closed its establishment. The case of the employer is that the establishment was closed from the year 1989 and hence as per the employer itself, the establishment was running in the year 1988. The contention of the employer that no balance sheet was prepared after the year 1987 perhaps would have been of some relevance if it was the case of the employer that the establishment was closed from the year 1988 and therefore, no balance sheet was prepared after the year 1987. This is not the case in the present case. Therefore, according to me, balance sheets for the year ending 31st March 1986 and 31st March 1987 or the fact as regards not preparing the balance sheet after the year 1987 would not be the proof that the establishment was closed from the year 1989. Non preparation of the balance sheet after the year 1987 may be for some other reasons also. Shri Prakash Ghode, the employer's witness has stated in his deposition that one Mr. Aparanji is the Chartered Accountant of the Company. The balance sheets Exb. 15 colly are prepared by the said Chartered Accountant. According to me, he would have been a material witness for the employer as he was looking after the accounts of the employer and preparing the balance sheets. His evidence would have been material on the issue as to whether the balance sheet was not prepared on account of the closure of the establishment. However, the employer did not examine him. I do not agree with the contention of Adv. Shri B. G. Kamat, the learned counsel for the employer that the evidence of Shri Ganpat Kerkar, the witness examined by the workman supports the case of the employer. In the cross-examination, the said witness stated that Shri Joseph inspected the firm on 11-12-87 and his observation was that the establishment was closed from June 1987 and thereafter, nobody visited the establishment.

This statement of the said witness in no way helps the employer, but it is in fact contrary to the case of the employer, as it is the contention of the employer that its establishment is closed from the year 1989 and not from the year 1987. Shri Prakash Ghode, the witness of the employer has stated in his cross examination, that the information given in the Form 3A of the office of the Provident Fund Commissioner that the establishment is closed from June 1987 is not correct. Therefore, the evidence of the witness Shri Ganpat Kerkar does not help the employer in any manner.

10. Shri Prakash Ghode, who is the Director and the witness for the employer has admitted in his cross examination that no letter of termination was issued to the workman on 10th February, 1989, the office of the Provident Fund Commissioner or the Labour Inspector was not informed about the closure of the establishment in the year 1989. However, he stated that he had informed the Provident Fund Inspector about the closure of the establishment in the year 1987 when he visited the office. Now, if the Provident Fund Inspector was informed about the closure of the establishment in the year 1987, why his office or the Labour Inspector's Office was not informed if the establishment was closed in the year 1989? He stated in the cross that as on the date the Registrar of Companies was not informed that the establishment was closed. If the establishment was closed from the year 1989, the employer ought to have informed the Registrar of the Companies as the employer is a Company incorporated under the Companies Act. The employer also did not produce any documentary evidence such as cancellation of the Registration of the establishment which was registered under the Shops and Establishment Act, cancellation of the Licence issued by the Municipality etc. The employer has relied upon the letter dated 20-9-89 Exb. 12 written by the workman to the employer. Adv. Shri B. G. Kamat, the learned counsel for the employer has submitted that in this letter, the workman has admitted the closure of the establishment from 10-2-89. I have gone through the said letter Exb. 14 and I do not agree that there is such an admission from the workman. In the said letter what the workman has stated is that on 10-2-89, the employer closed the shop premises and told him to go away without any written notice or a letter. This part of the statement cannot be construed as admission on the part of the workman that the establishment was closed from 10-2-89. What the workman has mentioned in the said letter is as regards the closing of the shop premises and not the establishment. Closing of the shop premises and closing of the establishment itself cannot be considered as one and the same thing. If the letter Exb. 14 is read as a whole, it is clear that the workman never admitted that the establishment was closed. In the said letter, the workman has called upon the employer to take him back on duty and if the employer failed to do so, it would be presumed that his services were terminated. In the said letter, the workman has also stated that since February 1989, he has been regularly contacting the employer and requesting that if his services are not wanted the same should be dispensed with after paying him all his dues. He has also stated that he should be told about his status in the company and that he has been willing and offering his services since 10th February, 1989 but he has been denied employment. All these go to show that the workman never admitted that the establishment of the employer was closed from 10-2-1989 but his contentions are that he has been refused employment from the said date. It is the contention of the employer that the management of the employer was prosecuted by the Labour Inspector for non renewal of the registration of offices and shop since the year 1989 under Shops and Establishment Act, and they were acquitted. Shri Prakash Ghode, the employer's witness has stated so in his deposition. However, no documentary evidence has been produced in support of his this contention. The only document which has been produced is the Judgement passed by the Chief Judicial Magistrate in Labour case Nos. 710/L/89 and 711/L/89 filed by the Labour Inspector against the Managing Director Shri Jaiwant Gude. The said cases were not in respect of non renewal of the Registration of the offices and shop under Shops and Establishment Act, but we in respect of violation of the rules under minimum wages Rules namely not issuing employment cards, payslips, not maintaining of register of overtime etc. it is true that in the said cases, the Managing Director Mr. Gude was acquitted. However, according to me acquittal in the said cases has no relevance in the present case. In the said labour cases, the Managing Director was acquitted by giving benefit of doubt because the Court held that the Complainant failed to prove that establishment was a running establishment or that it was carrying out any commercial activity or

employment, as against the certificate produced by the Managing Director which showed that it was not renewed after the year 1983. The Court also referred to the letter dated 27-12-88 produced by the Managing Director which is addressed to the Commissioner, Labour and Employment, Panaji, by which he was informed that the business was closed, and hence there was no question of complying with the provisions of Shops Establishments Act/Rules and the minimum wages Act/Rules. This letter itself shows that the employer has been changing its stand time and again and as per the convenience at the relevant time. In the Form 3 A Exb. 12 colly submitted to the office of the Provident Fund Commissioner, on 25-7-87, the employer took the stand that the workman left the services on 31-5-87 because of the closing of the business. In the Labour cases filed against the Managing Director, the employer took the stand that by letter dated 27-12-88 the Labour Commissioner was informed that the business was closed and whereas in the present case, the employer specifically took the stand that the establishment was closed from 10-2-89 and the services of the workman were terminated from the said date. In the cross examination, Shri Prakash Ghode, the Director of the employer admitted that the workman was in employment till 10-2-89 though he was not doing any work and stated that the earlier statement made in Form 3A that the workman left the services on 31-5-87 because of closure of business is incorrect. All the above facts clearly show that the employer is in the habit of changing its stand according to its convenience and as per the situation. Since in the present case the employer took the specific stand that its establishment was closed from 10-2-89, the documents produced by the employer namely the balance sheets and the judgment passed in the labour cases are not relevant. No evidence either documentary or oral has been produced by the employer to prove that the establishment is closed from 10-2-89. The evidence led by the employer is not sufficient to hold that the establishment was closed from 10-2-89. No reply was sent by the employer to the letter of the workman dated 20-9-89 Exb. 14 nor there is anything on record to show that the employer participated in the conciliation proceedings or filed any reply in the conciliation proceedings. If the establishment was closed from 10-2-89, the employer could have very well brought this fact to the notice of the workman by sending reply to his letter and also to the notice of the conciliation officer by filing reply or by participating in the conciliation proceedings. However, the employer did not do so. Therefore, on considering all the evidence on record, I hold that the employer has failed to prove that the company became a defunct company and hence it was closed and the services of the workman were terminated from 10-2-89. I therefore answer the issue No. 2 in the negative.

11. Now, once it is held that the employer has failed to prove that its establishment is closed from 10-2-89, the question is whether the termination of the services of the workman is legal and justified. The contention of the workman is that the employer's establishment is covered under the provisions of Shops and Establishment Act and hence the provisions of the said Act are applicable to him. Shri Prakash Ghode, the Director of the employer company has admitted in his evidence that the as registered under the Shops and Establishment Act. Adv. Shri B. G. Kamat, the learned counsel for the employer has however submitted that the provisions of the said Act are not applicable to the workman because he was drawing more than Rs. 500/- p.m. as salary. I do not agree with this submission of Adv. Shri B. G. Kamat. The provisions of the Shops and Establishment Act were not applicable to an employee whose average monthly wages exceeded five hundred rupees in terms of Sec. 61 of the said Act, prior to the Amendment Act of 1984. However, by Amendment Act of 1984, clause (a) of sub-section (1) of section 61 was amended and the average monthly wage of the employer was increased from Rs. 500/- to Rs. 1600/-. Therefore, after amendment to clause (a) of sub-section (1) of Sec. 61 of the Shops and Establishment Act, the provisions of the said Act were applicable to an employee whose monthly wage did not exceed Rs. 1600/-. This amendment was in force at the time when the services of the workman were terminated on 10-2-89. The workman in deposition has stated that his last drawn wages were Rs. 1205/- p.m. This statement of the workman has not been disputed or denied by the employer. Therefore, at the time when the services were terminated, the provisions of the Shops and Establishment Act were applicable to him. Sec. 29 of the said Act lays down the conditions for terminating the services of an employee. Sub-Section (1) of Sec. 39 states that no employee shall without a reasonable cause and except for misconduct, terminate the services of an employee who has

been in his employment continuously for a period of not less than six months without giving such employee at least one month's notice in writing or wages in lieu thereof and gratuity amounting to 15 days average wages for each year of continuous employment. Clause (c) of sub-section (1) of section 39 of the Act states that an employee shall be deemed to be in continuous employment for a period of not less than six months, if he has worked for not less than 120 days in the establishment within a period of six months immediately preceding the date of termination of the services of that employee. In the present case, it is not in dispute that the workman was in the employment of the employer for more than 120 days within the period of six months prior to the date of termination of his service.

His services were not terminated for misconduct and therefore, the provisions of Sec. 39 (1) of the Shops and Establishment Act were applicable to the workman. Shri Prakash Ghode, the Director of the employer has admitted in his cross examination that no letter of termination of services was given to the workman nor he was paid notice pay, retrenchment compensation or gratuity. Therefore, the termination of the services of the workman is in violation of the provisions of Sec. 39 (1) of the Shops and Establishment Act, 1973.

12. The contention of the workman that termination of his services is also illegal because his termination amounts to retrenchment and the employer did not comply with the provisions of Sec. 25 F of the I. D. Act, 1947 prior to termination of his service. Retrenchment has been defined under Sec. 2(oo) of the I. D. Act, 1947 as follows:-

"Retrenchment" means the termination by the employer of the services of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include (a) Voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contain a stipulation in that behalf; or

(bb) Termination of the services of the workman as a result of non renewal of its contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation that behalf concerned therein; or

(c) Termination of the services of a workman on the ground of continued ill health.

It has been held by me that the employer has failed to prove that the services of the workman were terminated from 10-2-89 because of the closure of the establishment. Admittedly, the services of the workman were not terminated as a matter of punishment inflicted by way of disciplinary action. The case of the workman also does not fall within the exception laid down in Sec. 2(oo) of the I.D. Act, 1947. Therefore the termination of the services of the workman amounts to retrenchment as rightly contended by the workman. Sec. 25 F of the I. D. Act, 1947 lays down the procedure for retrenchment. As per this provision, the services of a workman who in continuous service for not less than one year cannot be terminated unless he has been given one month's notice or paid wages in lieu of the month's notice as he has been paid compensation at the rate of 15 days average wage per each completed year of continuous service or any part thereof in excess of six months. The above conditions are conditions precedent to retrenchment. Sec. 25 B(2) of the I. D. Act defines continuous service. It states that the workman shall be deemed to be in continuous service under an employer for a period of one year if the workman during the period of 12 calendar month's preceeding the date with reference to which calculation is to be made, has actually worked under the employer for not less than 190 days in case of workman employed below ground in a mine and 240 days in any other case. In the present case, the workman was employed with the employer continuously without any break from January 1959. The employer has not disputed this fact. The employer has admitted that the workman was in employment till his services were terminated on 10-2-89. Therefore, the provisions of Sec. 25 F of the I. D. Act, 1947 became applicable to the workman. The workman has stated in his deposition that he was not given any letter of retrenchment nor he was paid his legal dues. The employer did not dispute this fact. Shri Prakash Ghode, the Director of the employer in his cross examination has

admitted that no letter of termination was given to the workman, nor he was paid notice pay nor retrenchment compensation. Therefore, there is no compliance of the provisions of Sec. 25 F of the I. D. Act, 1947 from the employer. The Supreme Court in the case of *M/s Avon Services Production Agency Pvt. Ltd, V/s Industrial Tribunal, Haryana & Others* reported in AIR 1979 SC 170 has held that giving of notice and payment of compensation is a condition precedent in the case of retrenchment and failure to comply with the prescribing conditions precedent for valid retrenchment in Sec. 25 F renders the order of retrenchment invalid and inoperative. In the present case, since there is no compliance of the provisions of Sec. 25 F of the I. D. Act, 1947 from the employer, the termination of services of the workman becomes illegal, invalid and inoperative. In the circumstances, I hold that the workman has succeeded in proving that termination of his services by the employer w.e.f. 10-2-89 is illegal and unjustified. Hence, I answer the issue No. 1 in the affirmative.

Issue No. 3

13. Once it is held that the termination of the services of the workman is illegal and unjustified, the next question is what relief should be granted to the workman. The ordinary rule is that when termination of service is held to be illegal and unjustified, the workman should be reinstated with full back wages unless there are circumstances which do not warrant reinstatement or full back wages. Adv. Shri B. G. Kamat, the learned counsel for the employer has submitted that the workman has admitted in his deposition that his date of birth is 21-1-1933. He has submitted that therefore, the workman would have retired on 21-1-1991 on completing the age of 58 years. The employer has not produced letter of appointment or any other document to support its contention that the retirement age of the workman was 58 years. Therefore, in the absence of any specific condition from the employer in this respect, the provision of the Shops and Establishment Act, 1973 would be applicable. While discussing the issue No. 1 I have already held that the provisions of the Shops & Establishment Act, 1973 are applicable to the workman. As per Sec. 39(3) of the said Act an employee who has completed the age of sixty years may give up his employment after giving one month's notice to the employer. This means that option is given to the workman to give up the employment after he completes the age of 60 years and till then, he continues to be in employment. Therefore, the contention of the employer that the workman would have retired from service on 21-1-91 on completing the age of 58 years is not correct. As per the provisions of section 39(2) of the Shops & Establishment Act, if the services of the workman were not terminated, he would have continued to be in employment even after completing the age of 60 years unless he had given up the employment. In the present case, the workman in his deposition has stated that he is unemployed. There is no evidence from the employer that since the date of termination of service, the workman is gainfully employed. I do not find any reason to deviate from the normal rule that once the termination is held to be illegal and unjustified, the workman should be reinstated in service with full back wages. The Supreme Court in the case of *State Bank of India V/s Sundara Money* reported in AIR 1976 SC 1111 after holding that the termination of the services of the workman was illegal for not complying with the provisions of Sec. 25 F of the I. D. Act, 1947 awarded reinstatement to the workman with full back wages. The Supreme Court in para 10 of its judgment held as follows:

"What follows? Had the State Bank of India known the law and acted on it, half month's pay would have concluded the story. But that did not happen. And now, some years have passed and the Bank has to pay for no service rendered. Even so, hard cases cannot make bad law. Reinstatement is the necessary relief that follows."

14. The above decision of the Supreme Court squarely applied to the present case. In the present case also, the services of the workman were terminated in violation of the provisions of Sec. 39(1) (a) of the Shops & Establishment Act, 1973 and that of Sec. 25 F of the I. D. Act, 1947. There is no evidence that the workman is gainfully employed after his services were terminated. Therefore, it is just and proper to award reinstatement to the workman with full back wages. I therefore hold that the workman is entitled to reinstatement in service with full back wages and other consequential benefits.

In the circumstances, I pass the following order.

ORDER

It is hereby held that the action of the management of M/s Subray and Company Private Limited, Margao, in terminating the services of the workman Shri Antonio Pereira, mechanic, with effect from 10-2-1989 is illegal and unjustified. The workman Shri Antonio Pereira is ordered to be reinstated in service with full back wages and other consequential benefits.

No order as to costs.

Inform the Government accordingly.

Sd/-
(AJIT J. AGNI)
Presiding Officer
Industrial Tribunal

Order

No. CL/Pub-Award/98/8961

The following Award dated 30-4-1998 in Reference No. IT/113/94 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Ex-Officio Joint Secretary (Labour).

Panaji, 26th May, 1998.

**IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI**

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/ 113/94

Shri Nascimento G. Fernandes,
H. No. 322, Near Holy Spirit Church,
Maddasai, Margao Goa.

— Workman/Party I

V/s

M/s. Voltas Limited,
Citicentre, Building No. 6, 3rd Floor,
Panaji Goa

— Employer/Party II

Workman/Party I represented by Adv. Shri Amol Thali.

Employer/Party II represented by Adv. Shri Shri G. K. Sardessai.

Dated: 30-4-1998.

AWARD

In exercise of the powers conferred by clause (d) of sub-section 10 of the Industrial Disputes Act, 1947, the Government of Goa by order bearing No. 28/49/94-LAB dated 16-12-94 referred the following dispute for adjudication to this Tribunal.

“ Whether the action of the management of M/s Voltas Ltd. in terminating the services of Shri Nascimento G. Fernandes, Peon, w.e.f. 1-2-94 is legal and justified.

If not, to what relief the workman is entitled ?”

2. On receipt of the reference, a case was registered under No. IT/113/94 and registered A/D notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. The workman/Party I (For short “workman”) filed his Statement of Claim which is at Exb. 3. The facts of the case in brief as pleaded by the workman are that he was employed with the Employer/Party II (For short “employer”) as a Peon w.e.f. 15-6-82. That the employer illegally and without any justification terminated his services w.e.f. 1-2-94. The workman claimed that he is entitled to receive from the employer an amount of Rs. 1,62,000/- as compensation for terminating his services illegally and without any justification.

3. The employer filed Written Statement which is at Exb. 6. The employer stated that there is no relationship of Employer-Employee between the workman and the employer and therefore, the industrial dispute under section 2(A) does not survive. The employer stated that the workman never made any demand on the employer with respect to reinstatement or otherwise and hence, the dispute cannot be called an ‘Industrial Dispute’ and therefore, the reference is null and void. The employer stated that the workman was in personal employment of one Mr. A. D. Pereira who is a Supervisor of the employer. The employer stated that, said Mr. A. D. Pereira was neither competent nor authorised to engage the workman on its behalf or to create any right in favour of the workman vis-a-vis the employer. The employer denied that the workman was employed as a Peon with the employer from 15-6-82 till 31-1-1994 as contended by the workman. The employer therefore prayed that the reference be rejected as the workman is not entitled to any reliefs. The workman thereafter filed rejoinder which is at Exb. 7.

4. On the pleadings of the parties, issues were framed at Exb. 8. After issues were framed, the employer filed an application dated 9-12-96 at Exb. 13 praying that Mr. A. D. Pereira be treated as a party to the proceedings. After the parties were heard, the said application of the employer was dismissed by order dated 21-4-97. Thereafter, the employer filed an amendment application dated 1-7-97 at Exb. 15 seeking to amend the written statement. Before the parties could be heard on the said amendment application, the parties submitted that the dispute between them was amicably settled and filed the consent terms dated 27-3-98 at Exb. 20. Parties prayed that consent award be passed in terms of the said settlement. I have gone through the consent terms filed by the workman and the employer and I am satisfied that the said terms are certainly in the interest of the workman. I therefore accept the submissions made by the parties and pass the Consent Award in terms of the Consent terms dated 27-3-98 Exb. 20.

ORDER

1. The Party No. I shall receive a sum of Rs. 25,000/- in full and final settlement of all the claims in the present reference.
2. The Party No. II shall pay the said amount to party No. I on signing of the consent terms.

No order as to cost.

Pronounced in the Open Court.

Sd/-
(AJIT J. AGNI)
Presiding Officer
Industrial Tribunal